FILE COPY



No. 360

# In the Supreme Court of the United States

OCTOBER TERM, 1948

FRED W. FINK, PETITIONER

*v.*

SEAPAC STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

## BRIEF FOR RESPONDENT

# INDEX



## CITATIONS





821840—49——1

# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 360

FRED W. FINK, PETITIONER

*v.*

SHEPARD STEAMSHIP COMPANY

*ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON*

## BRIEF FOR RESPONDENT

### OPINIONS BELOW

The trial court's opinion of September 16, 1946 (R. 173–178), denying respondent's motion for nonsuit, is reported at 1946 A. M. C. 1333. Its final opinion of October 5, 1946, denying respondent's motion for judgment notwithstanding the verdict or for a new trial (R. 8–9) is not reported. The opinion of the Supreme Court of the State of Oregon (R. 11–35) is reported at 192 P. 2d 258 and its opinion on rehearing (R. 39–40) at 193 P. 2d 537.

### JURISDICTION

The judgment of the Supreme Court of the State of Oregon was entered April 6, 1948 (R.

35). A petition for rehearing filed May 14, 1948 (R. 35), was denied May 18, 1948 (R. 41). The time to petition for a writ of certiorari was extended by successive orders of this Court to and including October 18, 1948 (R. 239). The petition for a writ of certiorari, filed October 18, 1948, was granted November 22, 1948 (R. 242).[1] The jurisdiction of this Court rests upon 28 U. S. C. 1257 (3).

**QUESTION PRESENTED**

During World War II the United States, on the organization of the War Shipping Administration in February 1942, took over the direct

[1] On the same day, this Court also granted certiorari in No. 351, *Cosmopolitan Shipping Company* v. *McAllister* and No. 430, *Gaynor* v. *Agwilines, Inc.*, and set the three cases down for hearing immediately following No. 179, *Weade* v. *Dichmann, Wright & Pugh* in which certiorari had already been granted, and which, like these three cases, also involves the question of the liability of general agents of the former War Shipping Administration. The Solicitor General appears for respondent general agent in this case and for the general agents in the other cases because, in accordance with the wartime general agency agreement between respondent and the War Shipping Administration, the United States is obligated for any recovery effected to the extent not covered by insurance (W. S. A. Form GAA 4-4-42). On the standard form insurance which is obtained, the United States in effect assumes the reinsurance of the most substantial part of all losses. House Merchant Marine and Fisheries Committee, Doc. No. 4, *Compilation of Standard Contract Forms of the War Shipping Administration*, p. 847. The defense of such actions is assumed by the Department of Justice whenever it appears to be required by the public importance of the question involved.

physical operation of the government-owned merchant fleet. It terminated the various bare-boat charters under which the Maritime Commission had demised the Government's vessels for private operation by charterers who, as owners *pro hac vice* in possession and control, manned, navigated and physically managed the vessels as their own. It replaced this prior peacetime method of private operation by direct government operation of the vessels, employing three independent types of agents, among whom it distributed the various operating duties. As its agents afloat, to man, navigate, and physically manage and operate the vessels, the War Shipping Administration employed experienced ship masters, officers and crews, who were subject to its exclusive control and were technically unclassified civil service employees of the United States. As its agents ashore, to operate the accounting and certain other shoreside business of the vessels, it employed experienced shipping operators as ships' husbands or general agents, but excluded them from any authority or control over the operation of the vessels themselves and the masters, officers and crews by whom the Government directly manned, navigated, managed, and operated its vessels. As agents to manage and conduct the loading of cargo and to render other berth and port services to its vessels, it employed shipping operators having existing berthing and stevedoring facilities. Various third parties, such as crew

members, longshoremen and passengers, injured as a result of the negligence of the Government's masters and crews in the navigation and management of its vessels, have brought suit against the shoreside business agents.

The question for decision is whether, with respect to causes of action arising after the effective date of the War Shipping Administration (Clarification) Act of March 24, 1943, these shoreside business agents, such as respondent here, are liable to third parties, such as petitioner, for the acts of the Government's civil service master and crew in doing work which was not assigned to such shoreside agents nor subject to their authority or control, but was exclusively work which the United States, as disclosed principal operating the vessels, had assigned to the master as its independent agent and employee.

## STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved, *i. e.*, the War Shipping Administration (Clarification) Act (57 Stat. 45, 50 U. S. C. App. 1291), the Jones Act (41 Stat. 1007, 46 U. S. C. 688), the Federal Employers' Liability Act (35 Stat. 65, as amended, 45 U. S. C. 51) and R. S. 1753 (5 U. S. C. 631), together with certain applicable Civil Service Rules and War Shipping Administration Operations Regulations, are set forth in Appendix A of the Brief for the Petitioner in

No. 351, *Cosmopolitan Shipping Company, Inc.* v. *McAllister.*

STATEMENT

The undisputed facts out of which the injuries complained of arose may be readily summarized from the narrative statement stipulated below (R. 178–179, 187). Petitioner, Fred W. Fink, was a War Shipping Administration seaman on its S. S. *George Davidson*. While the ship was off the coast of Tasmania, petitioner was ordered by his superiors, the master and boatswain, to empty a garbage can overboard. Although a heavy sea was running and it was necessary to lift the can, which weighed some 150 pounds, over a rail nearly four feet high, they assigned no other crew member to assist petitioner. While he was attempting to empty the can, the roll of the ship caused it to be thrown backward against him; he slipped and fell with the can and sustained the injuries involved. The evidence of damages and injuries were stipulated to be sufficient to sustain the verdict and judgment for $9,000 (R. 187).[2]

[2] The facts concerning petitioner's employment may be quickly summarized: Petitioner Fred W. Fink signed shipping articles with the master of the S. S. *George Davidson* at the port of Portland, Oregon (Vancouver, Washington), on June 8, 1945, for a foreign voyage, in the capacity of able seaman (R. 212). The *Davidson* was a vessel owned by the United States and operated by the War Shipping Administration; she was newly built by the Maritime Commission and this voyage was her first (R. 111, 182). Respondent

Petitioner, in compliance with the requirements of the War Shipping Administration (Clarification) Act of March 24, 1943 (Public Law 17, 78th Cong., 1st sess., c. 26, 57 Stat. 45, 50 U. S. C. App. 1291), filed claim on account of his injuries with the War Shipping Administration, Washington, D. C., and brought suit against the United States pursuant to the Suits in Admiralty Act (R. 105).[3] Petitioner also brought the present action in the Circuit Court of the State of Oregon for the

---

Shepard Steamship Company was employed by the United States as ship's husband or general agent to operate her shoreside business in accordance with the wartime standard form of husbanding agreement GAA 4–4–42 and "such directions, orders or regulations" as the Government might prescribe (R. 58).

Petitioner was furnished by the union hiring hall, apparently on request of the master of the *Davidson* for employment by him on behalf of the United States (R. 101, 87). Petitioner was not informed by the hiring hall or anyone else as to who was operating the vessel (R. 104). The shipping articles on which petitioner was employed listed the "Registered Managing Owner" of the *Davidson* as "War Shipping Administration" with address at Washington, D. C., and respondent on the line below as "Shepard Steamship Co. (Gen. Agents), 40 Central St., Boston, Mass.," as its general agent (R. 211). The name Shepard Steamship Company did not appear anywhere on the vessel and petitioner never received any written communication from them or anyone else; his discharge was signed by the master (R. 103–104, 81). He was paid by the master in cash (R. 102).

[3] *Fred W. Fink* v. *United States of America and Shepard Steamship Co.*, U. S. District Court, District of Oregon, Civil No. 2931. This admiralty suit was later dismissed without prejudice.

County of Multnomah against respondent Shepard Steamship Company alone (R. 1). The amended complaint sought damages under the Jones Act (Merchant Marine Act, 1920, 41 Stat. 1007, 46 U. S. C. 688) in excess of $25,000, alleging respondent "was in possession of, controlled, navigated, managed and operated" the *Davidson;* that respondent "was reckless, careless and negligent" in directing petitioner "to empty said garbage can when there was a heavy sea running" and "to lift and maneuver said heavy garbage can, taking into consideration the weight and bulk of the same", and further in "neglecting to have sufficient workmen to perform said task"; and that as a consequence petitioner suffered pain and injury (R. 1–3). Respondent's answer denied it possessed, controlled, navigated, managed, or operated the *Davidson* or employed petitioner; denied its negligence; and prayed that petitioner take nothing (R. 3–4).

The trial court, by stipulation of the parties, first conducted a preliminary hearing on the question of whether petitioner had the right to bring suit under the Jones Act, and thereafter, sitting with a jury, heard the case on the merits (R. 83–85). Motions for a nonsuit at the close of petitioner's case (R. 172), and for a directed verdict at the close of the trial (R. 183) were denied (R. 180, 183). The jury were instructed, over respondent's objections, "that the officers of the

ship, including the captain, mates, and boatswain, were agents" of respondent for the purpose of the case, and "if they were in any way guilty of negligence such negligence would be imputed" to respondent who would be liable therefor (R. 185). A verdict for petitioner was returned (R. 4), a motion for judgment notwithstanding the verdict or for a new trial (R. 6) was denied (R. 7), and judgment was entered on the verdict (R. 5). On appeal, the court below reversed (R. 35), holding that for negligence of the government-employed master and crew of a government-operated vessel occurring subsequent to the enactment of the Clarification Act, petitioner's exclusive remedy was by suit against the United States under the Suits in Admiralty Act (R. 11–35).

The opinion below recognized that *Caldarola* v. *Eckert*, 332 U. S. 155, differed from *Hust* v. *Moore-McCormack Lines*, 328 U. S. 707, in holding both that agents employed by the Government under the GAA 4–4–42 husbanding agreement are not owners *pro hac vice* or operating agents, and that the liability of a government agent for his own torts under *Brady* v. *Roosevelt Steamship Co.*, 317 U. S. 575, is not conclusive of his liability for the torts of other independent government agents and employees (R. 19–20). But it preferred to rest its decision on the effect of the Clarification Act, noting that this Court's discussion in the *Hust* case "left open the question whether the Clarification Act,

in its application to claims arising after the act became effective, deprived seamen of the right to sue the General Agent under the Jones Act as their employer, and there is no binding declaration of that court on that subject" (R. 24). The Oregon Supreme Court then held (R. 28), that the act "speaks in no uncertain terms" of the congressional intent that as government employees such seamen were to have "the same rights they would have had in private employment, though not the same remedies", and concluded (R. 28):

> * * * Although General Agents are not mentioned, the context of the section, as well as the legislative history, excludes the notion that they were to be regarded as employers of such seamen and liable to suit as such for the causes mentioned. Had that been in the mind of Congress, there would have been no reason for the provision regarding claims for injury and death, since, as employees of the General Agent, the seamen, without any additional legislation whatever, would have had the right to sue the agent under the Jones Act with the right to a jury trial. It would have been wholly unnecessary to accord to seamen in private employment the rights of seamen in private employment.

## ARGUMENT

Petitioner, a government-employed merchant seaman, brought two suits to recover for the neg-

ligence of his superiors: the master and boatswain, who like himself were civil-service employees of the United States, serving on a vessel of which the War Shipping Administration was operating owner in possession and control. One was a suit in admiralty pursuant to the Suits in Admiralty Act against the United States and respondent Shepard, a general agent or ship's husband employed by the Government to operate the accounting and certain other parts of the vessel's shoreside business. The other, now brought to the bar of this Court, was a suit at law in an Oregon state court against respondent Shepard alone. Petitioner's counsel dismissed the admiralty suit against the United States without prejudice, and brought the present suit to trial before a jury. The court below, reversing the judgment of the trial court, held that petitioner's exclusive remedy for the negligence of his superior officers, occurring after the enactment of the Clarification Act, was by suit against his employer, the United States, pursuant to the Suits in Admiralty Act.

The Brief for the Petitioner in the companion case of *Cosmopolitan Shipping Co.* v. *McAllister* (No. 351, this Term) fully develops the reasons and authorities which establish the correctness of the decision below. Here, it will be sufficient to deal briefly with certain special contentions found in this petitioner's brief, as well as to summarize pertinent testimony in this record on the functions and duties of a general agent.

I. In an oblique attack upon this Court's holding in *Caldarola v. Eckert*, 332 U. S. 155, 159—that general agents employed under the GAA 4–4–42 husbanding agreement to "operate" the accounting and certain other "business" of WSA vessels are not owners *pro hac vice* or operating agents—petitioner argues that the *Hust* case has established that the master and crew of such vessels, civil service employees of the United States, are in some sense "employees" whose negligence is attributable to the agents when the agents are sued under the Jones Act (Br. 7–13). Petitioner asserts that such a status is further supported by (1) the action of WSA respecting their collective bargaining agreements, (2) WSA's practical arrangements with the National Labor Relations Board and the National War Labor Board, and (3) the provisions of the GAA 4–4–42 husbanding agreement itself (Br. 9–11). Our brief for the petitioner in No. 351 shows (in Point III) that these factors, on the contrary, establish that the United States, and not its agents, was operating owner in exclusive possession and control of its vessels and the exclusive employer of its masters and crews, while its general agents were solely agents for its shoreside business.

We leave to the brief in No. 351 the discussion of the terms of the agency contracts, the regulations, and the other factors which show the correctness of the holding in *Caldarola* that the general agents were not operating agents or owners *pro*

*hac vice*. But we desire to buttress our arguments in that brief with a summary of the actual functions of the general agent in performing its duties, as testified to in this case by Mr. Earl Sanders, respondent's acting manager in the Northwest:

Prior to the war, respondent Shepard was an owner of vessels and operated its own ships as a common carrier in the inter-coastal trade, soliciting cargoes directly or by its own agents, and receiving the earnings of the vessels and bearing their losses (R. 110). It did not operate in any foreign trade, except on one or two occasions when it time chartered its vessels for someone else's service; it never operated to Australia or India, he route of the *Davidson* (R. 111).

Respondent's wartime services as agent under the general agency agreement were far different from these peacetime activities as owner; the ship was owned by the Government and under the agency agreement respondent was to "procure" the master, subject to the approval of the United States, who then became "an agent and employee of the United States," with "full control, responsibility and authority with respect to the navigation and management of the vessel" (R. 111, 59, Ex. 4, Art. 3 A (d)). It would locate a master whom it knew, or get one through the union or the Recruitment and Manning Organization of WSA (R. 112). WSA operated training schools for the officers whom it employed; and this func-

tion was carried on by the division of WSA known as the R. M. O. (the Recruitment and Manning Organization) (R. 112–113). An applicant for the job of master or officer on a WSA operated vessel had to fill out an application form (giving his record of service) which was captioned "War Shipping Administration, Division of Operations, Service Record", and this record was sent to WSA for approval before the master or officer was employed (R. 112–113, 80, Ex. G). Once employed by WSA all that was necessary for an officer to do to be transferred to another WSA vessel was to submit a "transfer form"; being a WSA employee, he could transfer to other vessels, for which different companies were general agents, merely by furnishing the transfer form; he did not change his employment by transfer from one vessel to another, and did not need to make a new application, as if he were obtaining new employment (R. 113–115).

When a new ship was being completed, the general agent would maintain contact with the shipyard as to the delivery date, checking as to the quantity of stores that would be furnished (R. 116). Meanwhile, WSA, through its Washington office, would direct that the licensed crew could be employed a certain number of days prior to scheduled delivery (R. 116). WSA would also appoint a berth agent, and issue directions to the general agent as to the service the vessel was to enter (R. 77–78, Ex. H). The general agent did not select the

berth agent; WSA designated the berth agent in line with its policy of assigning berth agencies to operators which prior to the war had maintained a regular berth service over the route of the voyage to be made (R. 147, 77, 198, Exs. H. and D). Respondent Shepard was not a berth agent for the *Davidson*; indeed, it was not even qualified to be a berth agent for this vessel, because it had never maintained a service in the area to which the *Davidson* voyaged (R. 119). American President Lines, which had operated in peacetime on the route to be made by the *Davidson*, was appointed berth agent for the ship and signed the bills of lading for the United States (R. 154, 77–78, Exs. H, I). The general agent had nothing to do with determining where the vessel would go, or in what service it would be operated, nor with soliciting or loading cargo or with collecting freight, when freight was involved; these things were functions of the berth agent (R. 117–118, 145). The general agent arranged for docks, pilotage, and so forth, only during the period prior to the time the vessel went to its loading berth. After that, the Army or Navy, or the berth agent, performed these functions (R. 153). The general agent performed the duty of storing and supplying the ship; all purchases were made in the name of the United States, and no sales tax was paid on purchases since they were really purchases by the United States (R. 145–146). With respect to reimbursement of the agent, the agency

agreement was departed from in actual practice, pursuant to government regulations, because reimbursement proved too slow, so the WSA supplied its agents with a revolving fund, from which the agent disbursed money for the account of the vessel (R. 146–148).

WSA instructed respondent to continue its crew procurement operations in accordance with its prewar collective bargaining agreements with the various maritime unions and to negotiate new agreements (R. 137–139; cf. 188–197). In the new bargaining agreements respondent, like other general agents while representing the WSA was in turn represented, pursuant to WSA instructions, by the Pacific American Shipowners Association (R. 138, cf. 162–170). And the resulting general agreements were signed "Pacific American Shipowners Association, J. B. Bryan, President, acting on behalf of the following member companies, in their capacity as general agents, War Shipping Administration". (Ex. 5; cf. R. 138). As general agent it procured the crew on requisition of the master, as provided by Article 3 A (d) of the GAA 4–4–42 agreement—which meant in practice that the agent found out from the master when he wanted his crew, and ordered a crew through the union hiring halls (R. 149–150). The agent did not interview the crew members as to their qualifications nor even

see the men, and if a man reported drunk or otherwise unfit, it was the master's responsibility to reject him, for the agent had no right or duty to reject him (R. 149–150). While the general agent selected the master for the United States, it had no right on its own initiative to fire the master, but was required to report any serious violations or unfitness of the master to WSA or to the Coast Guard (R. 150–152). Before the war, Shepard, when operating its own ships, could fire a master if "they just didn't want him handling their affairs" (R. 152–153). The general agent gave the master no instructions as to where to go, nor how to navigate or manage the vessel, while before the war Mr. Shepard, as owner, used to give the masters strict instructions as to such things as the "balance of economy between excessive speed and wearing out a ship" (R. 155–156).

The general agent had the duty of arranging for fueling the vessel for her voyage; instructions on this matter came from the District Marine Superintendent of WSA at San Francisco (R. 156). After a vessel left port, the functions of the general agent were primarily accounting—paying bills, and making reports for the WSA auditors (R. 157). When the vessel reached foreign ports, the general agent had nothing to do with her (although in some instances the berth agent would attend her), but WSA had its own employees as port representatives in most

foreign areas (R. 157–158). Upon the vessel's return, the general agent would assist the master and purser in making up the pay roll and the money to pay off the crew was wired directly to the master from the agent's revolving bank account of WSA funds (R. 159–162).

We submit that this testimony of a witness thoroughly familiar with the practice under the GAA 4–4–12 agreements is enough, of itself, to contradict petitioner's claim that general agents, such as respondent, were "operating agents" in possession and control of the Government's vessels, and establishes clearly that they were mere ships' husbands operating only the vessels' shoreside business.

2. The core of petitioner's contention is that liability of a general agent under the Jones Act may exist despite a complete absence of vicarious liability under the normal rules of law (Br. 16–20). Petitioner repeatedly invokes this Court's decision in *Hust* v. *Moore-McCormack Lines*, 328 U. S. 707, as establishing such a principle (Br. 14, 18, 20). He ignores, as an "attempt at hair-splitting" (Br. 17), the Court's holdings that the right to *bring* an action against a defendant is not conclusive of the "different question" whether "a cause of action" against the agent has been established, i. e. whether the agent is liable (*Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575, 580; and *Caldarola* v. *Eckert*, 332 U. S. 155, 159–160).

But in fact while in *Hust* the Court had held,

on a limited record, that general agents employed by the United States under the wartime GAA 4–1–42 husbanding agreement were "operating agents" or "private operators" of the Government's vessel (328 U. S. at 717, 720, 721, 724, 727, 730, 732)—so that, as such operators were akin to owners *pro hac vice*, they were vicariously liable to third persons for the negligence of the master and crew; but the Court subsequently held in *Caldarola* that they were not owners *pro hac vice* or operating agents—and therefore not liable to such third persons (332 U. S. at 159). And it is elementary that the basis of vicarious liability in a Jones Act suit must be the negligence of some individual who was performing work of the defendant and over whom the defendant exercised control. See Point IV in the Brief for the Petitioner in No. 351, pp. 102–113.

This removal by *Caldarola*, of what was the foundation of the agent's liability in *Hust* is, we submit, dispositive here, for the respondent general agent cannot be liable for the negligence of the Government's employees while doing work which the United States, as disclosed principal operating the vessels, had assigned exclusively to the Government's shipmaster as an independent Govern-

Cf. *Cox v. Lykes Bros. S.S. Co.*, 207 N. Y. 376, 383; *U. S. Shipping Board Emergency Fleet Corp. v. Greenwald*, 16 F. 2d 948, 951 (C. A. 2); *Stewart v. U. S. Shipping Board Emergency Fleet Corp.*, 7 F. 2d 676, 677 (E. D. N. Y.); *Quinn v. Southgate Nelson Corp.*, 121 F. 2d 196, 197 (C. A. 2), certiorari denied, 314 U. S. 682.

ment agent and over which the general agent is expressly denied all authority and control. While a seaman may have the right to *bring* a statutory Jones Act suit against the general agent (just as he can bring suit under the general maritime law), he can only hold the agent liable for the fault or negligence of its own independent employees, and can assert no cause of action against the agent for the fault or negligence of the master and crew, or of anyone who is not the agent's own independent employee, nor doing work assigned to the agent.

3. Finally, petitioner urges that the Clarification Act did not destroy the Government seamen's right to a Jones Act recovery against the general agent (Br. 22–48). But petitioner first disregards the fact, already pointed out, that unless the steamship company is operating the *vessel* as well as operating its shoreside *business*—of which alone the Government has given its general agents charge—the Government seaman never had a right of recovery against the company for the negligence of the master or crew, so that no such right could have been taken from him. On the other hand, as we have also pointed out, a right to recover on claims derived from the action or fault of the general agent's independent employees, engaged in doing its work entrusted to it by the United States, existed prior to the Clarification Act and was not disturbed by that legis-

lation. Petitioner's claim admittedly falls into the former category.

In any event, we submit—for the reasons set forth in Point V of the Brief for the Petitioner in No. 351—that the Clarification Act requires that after its enactment all causes of action arising out of the Government seaman's relation to the master and fellow crew members, by whom the United States mans, navigates, and physically operates its vessel, must be vindicated exclusively by suit against the United States pursuant to the Suits in Admiralty Act.[5]

For these reasons, petitioner's exaggerated reliance on assumed concessions by the Government in the lower courts wholly misreads our argument (Br. 23–26). We have always urged that, both before and after the Clarification Act, the general agent is not liable to seamen or to other third parties for the negligence or fault of the master or crew, but that a seaman can bring a statutory Jones Act suit against the agent for the fault or negligence of its own, independent employees. But in view of the *Hust* decision we also

[5] Petitioner's contention that various lower court decisions (Br. 45–48) established a numerical weight of authority that the Clarification Act does not make the Government seaman's remedy by suit against his employer, the United States, exclusive is fully answered by reference to the contrary decision of the Court of Appeals for the Third Circuit sitting *en banc* (*Gaynor* v. *Agwilines*, 169 F. 2d 612 (pending on writ of certiorari, No. 430)), of the Court of Appeals for the Ninth Circuit in *Lubinski* v. *Alaska S. S. Co.*, 153 F. 2d 1013, and of the court below.

urge that, if we be thought wrong on the scope of the general agent's liability prior to the Clarification Act, that statute prospectively prescribes an exclusive remedy against the United States under the Suits in Admiralty Act.

## CONCLUSION

For the reasons set forth in the Brief for the Petitioner in No. 351, and summarized above, it is respectfully submitted that the judgment of the court below should be affirmed.

PHILIP B. PERLMAN,
*Solicitor General.*
H. G. MORISON,
*Assistant Attorney General.*
LEAVENWORTH COLBY,
PAUL A. SWEENEY,
*Attorneys.*

JANUARY 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949

## Table of Cases Cited

CONSTITUTION, STATUTES AND ADMINISTRATIVE REGULATIONS CITED

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

---

# No. 430

---

ISAAC GAYNOR,

*Petitioner*

*vs.*

AGWILINES, INC.

---

## BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI

---

### I. The Opinions of the Courts Below

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 23A) was rendered under date of November 26, 1947, and is reported in 76 F. Supp. 617.

The opinion of the United States Court of Appeals for the Third Circuit was rendered on August 4, 1948, and is reported in 169 F. (2d) 612.

### II. Jurisdiction

1. The date of the judgment entered herein by the United States Court of Appeals for the Third Circuit, affirming the decree of the District Court, is August 4, 1948.